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**Official Title and Summary Prepared by the Attorney General**

**JUDGES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.** Permits judges of courts of record to accept part-time teaching positions that are outside the normal hours of their judicial position and do not interfere with the regular performance of their judicial duties. Prohibits judicial officer from earning retirement service credit from a public teaching position while holding judicial office. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Will have little, if any, fiscal impact on the state and local governments.

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**Final Vote Cast by the Legislature on ACA 17 (Proposition 94)**

Assembly: Ayes 63  
              Noes 2

Senate: Ayes 37  
           Noes 0

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**Analysis by the Legislative Analyst****Background**

The California Constitution prohibits judges of the Supreme Court, the courts of appeal, superior courts, and municipal courts from accepting other public office or employment, including teaching at *public* institutions, during their judicial terms. These judges may, however, teach at *private* institutions. The California Code of Judicial Conduct sets standards regarding the compensation judges may receive from participating in outside activities.

Under existing law, the state provides retirement benefits for these judges based on their age and the length of their judicial service.

**Proposal**

This constitutional amendment permits judges of the Supreme Court, the courts of appeal, superior courts, and municipal courts to teach part-time at public institutions, provided that the activity is outside the normal hours of their judicial positions and does not interfere with the performance of their duties. The measure prohibits judicial officers from gaining additional retirement credit from a public teaching position.

**Fiscal Effect**

This measure would have little, if any, fiscal impact on the state and local governments.

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## Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 17 (Statutes of 1988, Resolution Chapter 70) expressly amends the Constitution by amending a section thereof: therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT TO ARTICLE VI, SECTION 17

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, *except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office.* A judge of ~~the superior or municipal court~~ *a trial court of record* may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

*A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.*

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### Argument in Favor of Proposition 94

The primary purpose of Proposition 94 is to amend the State Constitution to allow a judge of a court of record to accept a part-time teaching position which does not interfere with his or her judicial duties. This measure also makes two technical changes which would: (1) prohibit any judge from earning retirement service credit from a public teaching position while holding judicial office, and (2) clarify the law requiring all judges of trial courts of record to take a leave of absence without pay in order to run for election to other public office.

The Constitution prohibits judges of courts of record from accepting public employment or public office outside their judicial position during their term of office. This prohibition has been interpreted to mean that a judge cannot accept a teaching position at a public school, but may accept one at a private school. The prohibition applies during the time the judge is actually in office and during the entire term for which the judge was selected, even if the judge has resigned part way through the term.

The practical effect of this provision has been to allow students at private universities and colleges to benefit from the knowledge and experience of judges, but to deny to the students at public educational institutions the contact and exposure to this valuable source of knowledge and expertise. Private institutions have been attract-

ing judges as lecturers and professors for many years and the experience has been overwhelmingly positive for these schools and their students.

In order to remedy this inequity, Proposition 94 would allow judges to accept part-time teaching positions at public institutions provided that the work does not interfere with the regular duties of the judge's position, and the work is undertaken outside the normal hours for that position.

Judges are regulated by the Canons of Judicial Conduct which require that the judge place primary emphasis upon his or her judicial position. A failure to adequately and competently discharge judicial duties can lead to removal from office. Californians thus can be assured that utilizing judges as teachers in public schools will be beneficial to the public and pose minimal potential for abuse.

We respectfully ask you to vote yes on Proposition 94.

PETER R. CHACON

*Member of the Assembly, 79th District*

V. GENE McDONALD

*Judge*

*President, California Judges Association*

P. TERRY ANDERLINI

*President, State Bar of California*

### Rebuttal to Argument in Favor of Proposition 94

The provision in Proposition 94 which permits judges to teach part time for pay at public institutions only as long as the job "*does not interfere with the regular performance of his or her judicial duties . . .*" is practically unenforceable.

Under existing law, a judge who allows any activities to prevent him or her from performing the duties of the judicial office could be removed by the California Supreme Court on recommendation of a Commission on Judicial Performance. This almost never happens.

Technically, judges of trial courts in California are elected by local voters. In reality, though, a trial court judge is ordinarily appointed by the Governor and stands election only if a local attorney runs against the Governor's choice.

Under Proposition 94, it might be possible to sue a judge whose part-time teaching position at a public institution is interfering with his or her full-time position on the bench. But what attorney would take the case? What questioning of the judge would be allowed in the lawsuit? What other judge would want to decide the case?

Given the staggering backlog of criminal and civil cases pending in California's courts, we should not authorize judges to take part-time jobs in public schools or colleges.

On November 8, please exercise your best judgment concerning the measures and candidates on the ballot. VOTE and encourage everyone you know to vote (preferably your way!).

GARY B. WESLEY

*Attorney at Law*

### Argument Against Proposition 94

Proposition 94 is a proposal by the Legislature to amend our State Constitution to permit a judge to teach part time for pay at public institutions as long as the job *"is outside the normal hours of his or her judicial position and . . . does not interfere with the regular performance of his or her judicial duties. . . ."*

The proposed amendment reflects a concern that judges not permit part-time teaching positions to interfere with their full-time jobs on the bench. However, neither existing law nor the proposed amendment restricts judges who teach part time in private institutions, such as the law schools at the University of Santa Clara, the University of San Francisco and the University of San Diego.

Why should we amend our State Constitution to create one rule for judges who wish to teach at public institutions and maintain another rule for judges who wish to teach at private institutions?

Allowing judges to teach part time is either a good idea or a bad idea.

Given the enormous volume of criminal and civil cases filed in California's courts, it is probably, on balance, a bad

idea to allow judges to teach part time.

Judges have an immense stack of homework every day. And, while attorneys sometimes wonder whether some judges have done their homework, allowing judges to teach part time at public institutions can only make matters worse. Teaching requires many hours of preparation and judges just do not have the time.

A "no" vote on Proposition 94 will retain the prohibition against judges teaching for pay at public institutions. The Legislature should offer voters at the next election a measure that would prohibit judges from teaching at private institutions as well.

Certainly, many judges are marvelous people and teachers who bring precious insight to the classroom; however, unless and until the number of judges across the state is increased dramatically, judges will not be able to find the time to both teach and handle their heavy caseloads.

With regard to my remark about attorneys sometimes wondering whether some judges have done their homework, I can only hope that the remark is taken in the kindly spirit in which it was offered!

GARY B. WESLEY  
*Attorney at Law*

### Rebuttal to Argument Against Proposition 94

The arguments against Proposition 94 are misguided.

First, this measure WILL NOT create one set of rules for those judges who teach at public schools and another set for those who teach at private schools. Instead, judges will be subjected to the same rules on part-time teaching regardless of where they may choose to teach. This is because all judges must follow the rules of judicial conduct. These rules require judges to place primary emphasis upon their judicial duties. Judges can be removed from office for poor performance. This threat will serve as an effective safeguard from potential abuses that might otherwise occur.

Second, the opposition asserts that on balance it is a bad idea to let judges teach part time because it will worsen the already enormous number of court cases filed. Yes, there is an enormous number of cases filed in our courts. Continuing a prohibition on after-work contact between judges and law students in public schools, however, WILL

NOT reduce or eliminate the number of cases filed. Instead, it will hurt our students by depriving them of the practical experience judges can bring to the classroom.

Many private schools employ judges to teach on a part-time basis. These schools recognize the importance of having judges interact with students in the classroom. Judges are "specialists" in the law and the rules and procedures of the court.

Improve our public school system. Permit students in public law schools to benefit from the experience judges can offer them.

Vote "yes."

PETER R. CHACON  
*Member of the Assembly, 79th District*

P. TERRY ANDERLINI  
*President, State Bar of California*

V. GENE McDONALD  
*Judge*  
*President, California Judges Association*